

TYCO HEALTHCARE GROUP LP d/b/a VNUS ) Case No. C08-03129 MMC  
MEDICAL TECHNOLOGIES, )

V.

**Defendant.**

Plaintiff,

**v.**

**Defendant.**

## SPECIAL VERDICT FORM

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

# I. QUESTIONS REGARDING ALLEGED INFRINGEMENT BY BIOLITEC

## Contributory Infringement [Jury Instruction No. 19]

**Question 1:** Has VNUS proven that it is more likely than not that biolitec, Inc. ("biolitec") has contributorily infringed one or more of VNUS's patent claims by its sale of the following:

1470 nm Laser Consoles, Radial Fibers, and Kits with Radial Fibers	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Kits with Bare-Tip Fibers	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

If you answered "Yes" to Question 1 for one or more biolitec product(s), check the appropriate box(es) below to indicate the claim(s) for which biolitec committed contributory infringement. Then continue to Question 2 below.

If you answered "No" to Question 1 for all of the biolitec products listed above, skip to Question 2 below.

'084 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input type="checkbox"/>
	Claim 18	<input checked="" type="checkbox"/>
	Claim 19	<input type="checkbox"/>
	Claim 20	<input checked="" type="checkbox"/>
	Claim 21	<input checked="" type="checkbox"/>

'803 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 7	<input checked="" type="checkbox"/>

'355 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 7	<input checked="" type="checkbox"/>
	Claim 12	<input type="checkbox"/>
	Claim 21	<input checked="" type="checkbox"/>
	Claim 22	<input checked="" type="checkbox"/>
	Claim 23	<input checked="" type="checkbox"/>
	Claim 24	<input type="checkbox"/>
	Claim 25	<input checked="" type="checkbox"/>

'433 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 10	<input checked="" type="checkbox"/>

'970 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 3	<input checked="" type="checkbox"/>
	Claim 8	<input checked="" type="checkbox"/>
	Claim 9	<input checked="" type="checkbox"/>
	Claim 13	<input checked="" type="checkbox"/>
	Claim 15	<input checked="" type="checkbox"/>
	Claim 17	<input checked="" type="checkbox"/>
	Claim 19	<input checked="" type="checkbox"/>
	Claim 20	<input checked="" type="checkbox"/>

**Inducing Infringement [Jury Instruction No. 20]**

**Question 2:** As to the following products, has VNUS proven that it is more likely than not that biolitec has induced infringement of one or more of VNUS's patent claims?

1470 nm Laser Consoles, Radial Fibers, and Kits with Radial Fibers	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
810 nm and 980 nm Laser Consoles, Bare-Tip Fibers, and Kits with Bare-Tip Fibers	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

If you answered "Yes" to Question 2 for one or more biolitec product(s), check the appropriate box(es) below to indicate the claim(s) for which biolitec induced infringement. Then continue to Question 3 below.

If you answered "No" to Question 2 for all of the biolitec products listed above, skip to Question 3 below.

'084 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input type="checkbox"/>
	Claim 18	<input checked="" type="checkbox"/>
	Claim 19	<input type="checkbox"/>
	Claim 20	<input checked="" type="checkbox"/>
	Claim 21	<input checked="" type="checkbox"/>

'803 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 7	<input checked="" type="checkbox"/>

'355 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 7	<input checked="" type="checkbox"/>
	Claim 12	<input type="checkbox"/>
	Claim 21	<input checked="" type="checkbox"/>
	Claim 22	<input checked="" type="checkbox"/>
	Claim 23	<input checked="" type="checkbox"/>
	Claim 24	<input type="checkbox"/>
	Claim 25	<input checked="" type="checkbox"/>

'433 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 10	<input checked="" type="checkbox"/>

'970 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 3	<input checked="" type="checkbox"/>
	Claim 8	<input checked="" type="checkbox"/>
	Claim 9	<input checked="" type="checkbox"/>
	Claim 13	<input checked="" type="checkbox"/>
	Claim 15	<input checked="" type="checkbox"/>
	Claim 17	<input checked="" type="checkbox"/>
	Claim 19	<input checked="" type="checkbox"/>
	Claim 20	<input checked="" type="checkbox"/>

**Willful Infringement [Jury Instruction No. 21]**

Only answer Question 3 if you answered "Yes" in response to Question 1 (whether biolitec contributorily infringed) or Question 2 (whether biolitec induced infringement) above.

**Question 3:** Has VNUS proven that it is highly probable that biolitec has willfully infringed one or more of VNUS's patent claims?

☒ Yes ☐ No

**Please go to Section II.**

## II. QUESTIONS REGARDING ALLEGED INFRINGEMENT BY TVS

### **Contributory Infringement** [Jury Instruction No. 19]

**Question 4:** Has VNUS proven that it is more likely than not that Total Vein Solutions, LLC d/b/a Total Vein Systems ("TVS") has contributorily infringed one or more of VNUS's patent claims by its sale of:

Introducers that are greater than 11 centimeters in length that have markers and/or a locking adapter	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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If you answered "Yes" to Question 4, check the appropriate box(es) below to indicate the claim(s) for which TVS committed contributory infringement. Then continue to Question 5 below.

If you answered "No" to Question 4, skip to Question 5 below.

'084 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	
	Claim 18	<input checked="" type="checkbox"/>
	Claim 19	
	Claim 20	<input checked="" type="checkbox"/>
	Claim 21	<input checked="" type="checkbox"/>

'803 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 7	

'355 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 7	
	Claim 12	
	Claim 21	
	Claim 22	
	Claim 23	
	Claim 24	
	Claim 25	

'433 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 10	

'970 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 3	
	Claim 8	
	Claim 9	
	Claim 13	
	Claim 15	<input checked="" type="checkbox"/>
	Claim 17	
	Claim 19	
	Claim 20	

**Inducing Infringement** [Jury Instruction No. 20]

**Question 5:** As to the following products, has VNUS proven that it is more likely than not that TVS has induced infringement of one or more of VNUS's patent claims?

Laser Fibers	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Introducer Kits	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Procedure Packs	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Thermalite 1470 Laser Console	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

If you answered "Yes" to Question 5 for one or more TVS product(s), check the appropriate box(es) below to indicate the claim(s) for which TVS induced infringement. Then continue to Question 6 below.

If you answered "No" to Question 5 for all of the TVS products listed above, skip to Question 6 below.

'084 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 18	<input checked="" type="checkbox"/>
	Claim 19	<input checked="" type="checkbox"/>
	Claim 20	<input checked="" type="checkbox"/>
	Claim 21	<input checked="" type="checkbox"/>

'803 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 7	<input checked="" type="checkbox"/>

'355 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 7	<input checked="" type="checkbox"/>
	Claim 12	<input checked="" type="checkbox"/>
	Claim 21	<input checked="" type="checkbox"/>
	Claim 22	<input checked="" type="checkbox"/>
	Claim 23	<input checked="" type="checkbox"/>
	Claim 24	<input checked="" type="checkbox"/>
	Claim 25	<input checked="" type="checkbox"/>

'433 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 10	<input checked="" type="checkbox"/>

'970 Patent	Claim 1	<input checked="" type="checkbox"/>
	Claim 2	<input checked="" type="checkbox"/>
	Claim 3	<input checked="" type="checkbox"/>
	Claim 8	<input checked="" type="checkbox"/>
	Claim 9	<input checked="" type="checkbox"/>
	Claim 13	<input checked="" type="checkbox"/>
	Claim 15	<input checked="" type="checkbox"/>
	Claim 17	<input checked="" type="checkbox"/>
	Claim 19	<input checked="" type="checkbox"/>
	Claim 20	<input checked="" type="checkbox"/>

**Willful Infringement** [Jury Instruction No. 21]

Only answer Question 6 if you answered "Yes" in response to Question 4 (whether TVS contributorily infringed) or Question 5 (whether TVS induced infringement) above.

**Question 6:** Has VNUS proven that it is highly probable that TVS has willfully infringed one or more of VNUS's patent claims?

☒ Yes ☐ No

Please go to Section III.

**III. QUESTIONS CONCERNING THE VALIDITY OF THE ASSERTED CLAIMS**

**Question 7:** Have Defendants proven that it is highly probable that one or more of VNUS's patent claims is invalid?

  X   Yes        No

*If you answered "Yes" to Question 7, mark the claim or claims that are invalid and the reason or reasons why.*

*If you answered "No" to Question 7, skip to Question 8a below.*

<b>Claim</b>		<b>Anticipated</b> <i>Jury Instructions 23-25</i>	<b>Obvious</b> <i>Jury Instructions 26-29</i>	<b>Not Enabled</b> <i>Jury Instruction 30-31</i>
'084 Patent	Claim 1		X	
	Claim 2		X	
	Claim 18		X	
	Claim 19		X	
	Claim 20			
	Claim 21			
'803 Patent	Claim 1		X	
	Claim 2			
	Claim 7			
'355 Patent	Claim 1		X	
	Claim 2			
	Claim 7			
	Claim 12		X	
	Claim 21			
	Claim 22			
	Claim 23			
	Claim 24		X	
	Claim 25		X	
'433 Patent	Claim 1			
	Claim 10			
'970 Patent	Claim 1			
	Claim 2			
	Claim 3			
	Claim 8			
	Claim 9			
	Claim 13			
	Claim 15			
	Claim 17			
	Claim 19			
	Claim 20			

***Please go to Section IV.***

#### IV. DAMAGES

*Only answer Questions 8a and 8b if you have found that biolitec has infringed one or more valid claims.*

**Question 8a:** What sum of money would fairly and adequately compensate VNUS for biolitec's infringement?

\$ 9,340,000

**Question 8b:** Is your answer based on a lost profits measure [Jury Instructions 33-35] or a reasonable royalty measure [Jury Instructions 36-37]?

☒ Lost Profits      ☐ Reasonable Royalty      (*check only one*)

*Only answer Questions 9a and 9b if you have found that TVS has infringed one or more valid claims.*

**Question 9a:** What sum of money would fairly and adequately compensate VNUS for TVS's infringement?

\$ 36,500,000

**Question 9b:** Is your answer based on a lost profits measure [Jury Instructions 33-35] or a reasonable royalty measure [Jury Instructions 36-37]?

☒ Lost Profits      ☐ Reasonable Royalty      (*check only one*)

You have now reached the end of the verdict form and should review it to ensure it accurately reflects your unanimous determinations. The Foreperson should then sign and date the verdict form in the spaces below and notify the Security Guard that you have reached a verdict. The Foreperson should retain possession of the verdict form and bring it when the jury is brought back into the courtroom.

DATED: December 8, 2010

  
Foreperson